

Understanding the Determinants of ICC Involvement: Legal Mandate, Power Politics, and the Crisis of Legitimacy

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Abstract

What explains the initiation and escalation of International Criminal Court (ICC) involvement in a situation? In light of recent charges of bias against and challenges to the institutional legitimacy of the ICC, understanding the determinants of ICC involvement is critically important. Does the ICC get involved in those situations most in need of international attention and prosecution – i.e. those with the gravest violations of human rights and the least likelihood of domestic prosecution of the perpetrators? Or, alternatively, are the Court's decisions influenced by international politics? This paper analyzes the determinants of ICC involvement and the escalation of that involvement. We test a legal mandate argument – that ICC involvement and escalation are driven primarily by the severity of human rights violations and the lack of domestic ability or will to prosecute such violations – against a power politics argument – that economic and security relations with leading states, such as the five permanent members of the United Nations Security Council (P5) impact where the ICC will initiate investigations and how far those investigations progress. Using a variety of measures for both arguments in a country-month analysis from 2002-2015, we find that the ICC's motivations are mixed. Both the gravity of human rights violations and links to the P5 influence the ICC's decision-making.

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